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DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

In re Application of:
AOKI, TAKASHI et al
Application Serial No.: 10/526,490
Filed: March 04, 2005
For: **IMAGE PROCESSING APPARATUS AND
IMAGE PROCESSING METHOD**

DECISION
ON PETITION

This is a decision on the petition, filed on August 6, 2008 under 37 C.F.R. §1.181 to withdraw holding of Non-Compliance Notice mailed on July 25, 2008.

Petitioner states in part "Please note that the requirements of 37 C.F.R. § 1.121 set forth the manner of making *amendments* in an application. ... The status identifier (withdrawn - currently amended) is also acceptable for a withdrawn claim that is being currently amended. ... The Notice of Non-Compliance cites the basis for non-compliance as being that:

Claim 7 and 13 are non-compliant claims because they recites two labels (WITHDRAWN and CURRENTLY AMENDED) at the same time while one label is required.

Applicant notes that this basis is cited despite the fact that the face of the Notice of Non-Compliance clearly indicates that status identifiers may be any *"one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended)." "*

BACKGROUND

An Amendment after final rejection was filed on June 11, 2008. As part of the amendment after final, applicant used the status identifier (Withdrawn – Currently Amended) for claims 7 and 13.

On July 25, 2008, a Notice of Non-Compliant Amendment (37 CFR 1.121) and Advisory Action were simultaneously mailed to the applicant. The Notice of Non-Compliant Amendment stated "Claim 7 and 13 are non-compliant claims because they recite two labels (WITHDRAWN and CURRENTLY AMENDED) at the same time while one label is required."

37 CFR § 1.121(c)(2) states in part:

If a withdrawn claim is currently amended, its status in the claim listing may be identified as "withdrawn — currently amended."


MPEP § 714(II)(C)(A) states:

(A) Status Identifiers: The current status of all of the claims in the application, including any previously canceled or withdrawn claims, must be given. Status is indicated in a parenthetical expression following the claim number by one of the following status identifiers: (original), (currently amended), (previously presented), (canceled), (withdrawn), (new), or (not entered). The status identifier (withdrawn – currently amended) is also acceptable for a withdrawn claim that is being currently amended. See paragraph (E) below for acceptable alternative status identifiers.

Applicant's use of the Status identifier (Withdrawn – Currently Amended) is clearly within the boundaries set forth by the Patent Rules and MPEP.

The request for withdrawal of the Non-Compliant Amendment (37 C.F.R. 1.121) notice mailed on July 25, 2008 is **Granted**.

Amendment after final rejection has already been considered by the examiner as evidenced by the Advisory Action mailed July 25, 2008. Therefore, the application is being forwarded to the Technology Center for processing and consideration of the Pre-Appeal Brief Request for review and petition to withdraw restriction requirement simultaneously filed September 23, 2008.



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